79-6160

UNITED STATES SUPREME COURT

RECEIVED
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SUPREME COURT, U.S.

State of Wisconsin
Plaintiff-Appellee

vs

Arthur F. Jackson
Defendant-Appellant

JURISDICTIONAL STATEMENT

(a) Attached is a copy of opinion from the State of Wisconsin Court of Appeals, District IV, dated 9/24/79 from which the defendant is appealing. Also attached is a copy of notice from the Office of the Clerk, Supreme Court of Wisconsin dated December 12, 1979 stating that the petition for review by Wisconsin's Supreme Court was denied.

(b) (1) The proceeding was a traffic ticket for speeding brought in pursuant to Wisconsin Statutes Section 346.57(5) as follows:

> "Zoned and Posted Limit. In addition to complying with the speed restrictions imposed by subs (2) [Reasonable and prudent limit] and (3) [Conditions requiring reduced speed], no person shall drive a vehicle in excess of any speed limit established pursuant to law by state of local authorities and indicated by official signs."

(2) The defendant asks the court to review the judgement of guilty of the speeding offense which was founded by Circuit Court Branch 10 of the State of Wisconsin on February 19, 1979.

A Notice of Appeal from the above judgement was filed on February 23, 1979 with Wisconsin Court of Appeals. The Notice of Appeal from the Wisconsin Appeals Court opinion dated 9/24/79 was filed on October 8, 1979.

(3) The statutory provision which confers on the United States Supreme Court jurisdiction in this appeal is Title 28 Section 1257(2) as follows:

> "Final judgement or decrees rendered by the highest court of the state in which a decision could be had, may be reviewable by the Supreme Court as follows:
>
> (2) By appeal, where it is drawn into question the validity of a statute of any state on the grounds of its being repugnant to the Constitution, treaties or laws of the United States and the decision is in favor of its validity."
>
> 28 USC 1257

(4) Cases which sustain these jurisdictions are:

> "Where the validity of Gen Laws California 1937, Act 2964, Section 10 as construed by California courts was drawn in

question on grounds of its being repugnant to USCA Constitution Article 6, Clause 2, a judgement of the Suprement Court of California was properly before the U.S. Supreme Court in appeal under former Section 344 of this title."

Standard Oil of California v Johnson Cal 1942, 316 US 481

"Where highest court of state determined that state statutes did not violate USCA Constitution Amendment 14, Paragraph 1, United States Supreme Court had jurisdication of appeal."

Winters v People of the State of NY 1948, 333 U.S.507

"United States Supreme Court had obligatory jurisdiction over appeal from State Supreme Court judgement affirming convictions under statute which defendant contended was unconstitutional and then was required to decide issue of constitutionality of statute.

U.S. ex rel WOJTYCHA v Hopkins 517 F 2d 420

(5) The text of the Wisconsin statute in which the validity is in question is set out verbatim in b(1) above. The volume and page where it can be found is, West's Wisconsin Statutes Annotated, Sections 346-350, Page 309.

(c) There are many questions which can be raised in this appeal. The defendant in order to keep the appeal as brief and concise as possible will address the main question. The other questions are related to the main question. This question is:

Can the state constitutionally prosecute the violation of a public law under civil jurisdiction without violating the intent of the U.S. Constitution as expressed in the Preamble and specifically Article VI, Section 2 and the 14th Amendment, Section 1?

Relative questions to the above main question are:

(1) Are the procedural safeguards guaranteed by the U.S. Constitution, specifically the 14th Amendment violated when the state can deny a person a right to a jury trial when prosecuting a supposedly violated public law because the state legislature has declared an offense against a public law a civil violation?

WSA 345.43 Jury Trial

"(2) If there is a demand for a trial by a jury of 12, the procedure applicable to jury trials in civil action shall apply."

(2) Has a persons' Constitutional rights been violated when the state denies him his fundamental right to assistance of counsel of choice because the state legislature has declared that the violation of the public law in question is not a criminal offense.

(3) Is a person's Constitutional right violated when the state can modify long standing procedural safeguards and permit the executive branch of government to issue a summons?

(d) The defendant was stopped by a state trooper on September 30, 1978, cited for exceeding the 55 MPH speed limit and given an "executive" summons to appear in court. The defendant made a special appearance in court and demanded all his rights including a trial by jury. and objected to the courts jurisdiction. The Court entered a plea of not guilty for the defendant and set a trial date. Between the initial appearance and the trial date the defendant entered a motion for dismissal because of lack of jurisdiction. This motion presented the long standing distinction between criminal and civil procedures and questioned whether the state constitutionally has jurisdiction and whether the state has violated long standing Constitutional safeguards when it prosecutes the violation of a public law under civil jurisdiction.

At the beginning of the trial on February 19, 1979, the defendant entered three additional notices to dismiss because of lack of jurisdiction based on (1) Civil vs Criminal jurisdictional issue, (2) No lawful summons was issued and (3) The 55 MPH speed limit is a national speed limit.

Also at the trial the defendant raised the Constitutionality issue of the denial of a trial by jury and his right to assistance of counsel of choice.

All of the motions and Constitutional issues raised by the defendant were denied by the trial court.

The trial court found the accused guilty of speeding ten miles over the 55 MPH speed limit. The defendant appealed the trial courts decision. On September 24, 1979, Wisconsin Court of Appeals in District IV upheld the trial courts judgement. The defendant appealed the Court of Appeals decision and on December 12, 1979 a letter was sent to the accused by the Clerk of the Wisconsin Supreme Court denying his petition for review of the Court of Appeals decision.

In the Wisconsin Court of Appeal Decision it supported the argument that the defendant's Constitutional rights were not violated by saying:

"The legislative power shall be vested in a senate and assembly."

"It is well established that the legislature has the power to make the law."

"The power to make the law surely includes the power to determine and define that which is and is not criminal."

Further the Appeal Court said;

"Speeding violations result in forfeitures. The legislature has decreed that conduct punishable only by forfeiture is not a crime."

The distniction between criminal and civil jurisdiction are principles of long standing where the former generally involves a violation of a public law or an act injurious to the public in which the government is the prosecution. The latter is generally related to private rights of individuals and to the legal actions involving them.

The defendant contents that the procedural safeguards set up in the Constitution and the Bill of Rights were mainly concerned with criminal proceedings. All officers of the judicial branch of government are sworn to defend the U. S. Constitution and for them to permit the government to prosecute public laws under civil jurisdiction would place "The Blessings of Liberty" of the American people in jeopardy. The 14th Amendment provides the U. S. Supreme Court the Constitutional authority to insure that the states uphold the Constitution safeguards. The importance of observing procedural safeguards with respect to preserving "The Blessings of Liberty" cannot be over emphasized. See Justice Felix Frankfurter statement in Wolf v Colorado 1949, 338 US 25, 27 and as quoted in my Memorandum in Support of Affidavit of Impecuniosity.

(e) The distinction between criminal and civil proceedings is a distinction of long standing importance. Many of the procedural safeguards set up in the U. S. Constitution and most if not all of the state constitutions are based on the distinction between criminal and civil proceedings. These procedural safeguards can be circumvented by the federal and state governments if violation of public laws can be redefined as civil offenses. This redefining of offenses against public laws as civil violations completely by-passed the amendment process and the people.

It is felt that neither liberty nor justice in the United States can be preserved if the distinction between criminal and civil procedures can be legislated away and therefore if for not any other reason this issue is brought within the 14th Amendment by the process of absorption.

Justice Cardozo said:

"We reach a different plane of social and moral values when we pass to the priveleges and immunities that have been taken over from the earlier articles of the federal bill of rights and brought within the 14th Amendment by a process of absorption.... If the 14th Amendment has absorbed them, the process of absorption has had its source in the belief that neither liberty nor justice would exist if they were sacrificed."
Palko v Conn, 1937, 302 US 319

Further:

"The adoption of this amendment (14th) implied that there are matters of fundamental justice that the citizens consider so essential an ingredient of human rights as to require restraint of action on behalf of any state that appears to ignore them."
Orleans Parish School Bd v Bush, CA La 1957, 351 US 948, 354 US 921

and

"The legislative authority cannot usurp the power to determine what is due process of law, and on the plea of public necessity ignore the well established safeguards which the law of the land has heretofore recognized and enforced."
Meyers v Shields, CC Ohio 1894, 61 F 713

It is strongly urged that the U. S. Supreme Court permit the question raised in the appeal concerning the state prosecuting the offense against a public law under civil procedure be argued and that the issue is fundamental to preserving justice and liberty for all citizens of the United States.

Attached is a copy of (copies not sent to adverse parties):

1. Wisconsin Court of Appeal Opinion dated 9/24/79
2. Letter from Clerk of Wisconsin Supreme Court denying petition to appeal
3. Judgement of Forfeiture dated 2/28/79 signed by trial judge Angela Bartell
4. Notice of Appeal dated 2/7/80 filed with the Wisconsin Supreme Court
5. Letter from Clerk, Wisconsin Supreme Court indicating record was remitted to trial court
6. Notice of Appeal dated 2/19/80 filed with Circuit Court, Branch 10

Dated this 22nd day of February 1980.

Respectfully submitted,

Arthur F. Jackson

Arthur F. Jackson
2310 Elizabeth Street
Janesville, Wisconsin 53545

Office of the Clerk

SUPREME COURT

STATE OF WISCONSIN

Madison, December 12, 1979

To

Robert Selk
Asst. District Attorney
Dane County Courthouse
Madison, WI 53709

Arthur F. Jackson
2310 Elizabeth St.
Janesville, WI 53545

The Court today announced an order in your case as follows:

No. 79-178 State of Wisconsin v. Arthur F. Jackson

The court having considered the defendant-appellant-petitioner's petition for review of the decision of the court of appeals, district IV, of September 24, 1979,

IT IS ORDERED that the petition is denied.

MARILYN L. GRAVES

Clerk of Supreme Court.

RC-105

STATE OF WISCONSIN, Plaintiff, vs. ARTHUR F. JACKSON, Defendant.	JUDGMENT OF FORFEITURE Case No. 79-178

Upon all the files, records and proceedings, it is adjudged that the defendant has been found guilty after trial to the court on the 19th day of February, 1979, of the offense of speeding ten (10) miles per hour over the posted limit in violation of Section 346.57(4)(h) of the Wisconsin Statutes, committed on September 30, 1978.

IT IS ADJUDGED, that the defendant is guilty.

It is adjudged that the defendant forfeit $30 and $10 costs. The payment of the judgment is deferred for a period of 60 days.

Dated this 23rd day of February 1979. Nunc pro tunc February 19, 1979.

BY THE COURT:

Angela Bareill, Judge
Circuit Court, Branch 10
Dane County, Wisconsin

WISCONSIN SUPREME COURT

State of Wisconsin Plaintiff-Appellee vs Arthur F. Jackson Defendant-Appellant	NOTICE OF APPEAL Case No. 79-178

Please take notice that the Defendant, Arthur F. Jackson, hereby appeals to the United States Supreme Court from the Judgment of Conviction rendered by Circuit Court Branch 10, Dane County, State of Wisconsin on the 19th of February 1979 and the subsequent Appeals to the Court of Appeals dated February 21, 1979 and the Wisconsin Supreme Court dated October 4, 1979. This appeal is taken to the United States Supreme Court under Section 1257(2) of Title 28 of the United States Code.

Dated this 7 day of February, 1980.

Arthur F. Jackson, Pro Se
2310 Elizabeth Street
Janesville, Wisconsin 53545

Copies to:
Robert Selk, Assistant District Attorney, Dane County Courthouse,
Madison, Wisconsin 53709

The State of Wisconsin

Supreme Court Chambers

Madison

53702

BRUCE F. BEILFUSS
CHIEF JUSTICE
NATHAN S. HEFFERNAN
CONNOR T. HANSEN
ROLAND B. DAY
SHIRLEY S. ABRAHAMSON
WILLIAM G. CALLOW
JOHN L. COFFEY

J. DENIS MORAN
DIRECTOR OF STATE COURTS
MARILYN L. GRAVES
CLERK

February 14, 1980

Mr. Arthur F. Jackson
2310 Elizabeth Street
Janesville, WI 53545

RE: State of Wisconsin v. Arthur Jackson
Appeal Number 79-178

Dear Mr. Jackson:

We received the notice of appeal you filed regarding appealing to the U.S. Supreme Court. The Court of Appeals affirmed the judgment of the trial court on September 24, 1979. On October 8, 1979 you filed a petition for review in the Supreme Court. That petition was denied on December 12, 1979. We have retained a copy of the notice of appeal and are returning the original to you. Pursuant to Rules of the Supreme Court of the United States - Part IV (3)"If the appeal is taken from a state court, the notice of appeal shall be filed with the clerk of the court possessed of the record". The record in this case was remitted to the trial court on December 12, 1979.

Sincerely,

Kay Wacker
Deputy Clerk

cc: Clerk of Court, U.S. Supreme Court
Clerk of Court, Dane County

Feb. 26, 1980 (confirmed by tel.)

CIRCUIT COURT

STATE OF WISCONSIN : BRANCH 10 : DANE COUNTY

State of Wisconsin
Plaintiff-Appellee

vs

Arthur F. Jackson
Defendant-Appellant

NOTICE OF APPEAL

Appeal Case No.: 79-178
Trial Case No.: 273-259

Please take notice that the Deferdant, Arthur F. Jackson, hereby appeals to the United States Supreme Court from the Judgement of Conviction rendered by Circuit Court Branch 10, Dane County, State of Wisconsin on the 19th of February 1979 and subsequent Appeals to the Court of Appeals dated February 21, 1979 and the Wisconsin Supreme Court dated October 4, 1979. This appeal is taken to the United States Supreme Court under Section 1257(2) of Title 28 of the United States Code.

Attached is a copy of a letter from the deputy clerk of the Wisconsin Supreme Court indicating that the record in this case has been remitted to the trial court.

Dated this 27 day of February, 1980.

Arthur F. Jackson, Pro Se
2310 Elizabeth Street
Janesville, Wisconsin 53545

Copies to:
Robert Sells, Assistant District Attorney, Dane County Courthouse, Madison, Wisconsin 53709

DATED AND RELEASED

SEP 24 1979

FILED

SEP 24 1979

CLERK OF COURT OF APPEALS
OF WISCONSIN

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals pursuant to s. 808.10 within 30 days hereof, pursuant to rule 809.62 (1).

No. 79-178

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ARTHUR JACKSON,

Defendant-Appellant.

NOTICE
This opinion is subject to further editing. If published the official version will appear in the bound volume of the Official Reports.

APPEAL from the judgment of the circuit court for Dane county: ANGELA B. BARTELL, Judge. Affirmed.

GARTZKE, P.J. Defendant has appealed from the judgment of the circuit court that he forfeit $30 plus costs for violating sec. 346.57(5), Stats., by operating a motor vehicle ten miles per hour over the posted limit.[1] This is an appeal to a one-judge court of appeals. Sec. 752.31(2), Stats.

Defendant was issued a citation by a state trooper September 30, 1978, his speed having been clocked by radar. He specially appeared in his own right, at which time he made a written demand for "all of my rights," stated he waived none, objected to the jurisdiction of the court and demanded a trial in a "federal common law court" by a "federal common law jury" and counsel of his choice. He subsequently moved the court for determination as to whether the offense charged was criminal or civil. The court held that the offense charged was an action for a civil forfeiture and not a crime.

The matter was tried by the court without a jury, over defendant's objection. The arresting officer testified. Defendant offered no evidence and the court found him guilty.

Defendant raises seven issues on appeal which we shall separately state and discuss.

1. He states that the main issue is whether the state can classify traffic violations as civil rather than criminal matters. He contends that a speeding violation is inherently a crime and therefore cannot be treated as a civil matter and that it is for the courts and not the legislature to classify an act as a crime or as a civil matter. In his view, the constitutional separation of powers between the judiciary and the legislature requires that courts define what is and is not criminal.

Article IV, sec. 1 of the Wisconsin Constitution provides, "The legislative power shall be vested in a senate and assembly."

It is well established that the legislature has the power to make law. M., St. P. & S. S. M. R. Co. v. Railroad

Commission, 136 Wis. 146, 160-63, 116 N.W. 905 (1908); In re Village of Chenequa, 197 Wis. 163, 166, 221 N.W. 856 (1928). The power to make law surely includes the power to determine and define that which is and is not criminal.

There is no provision in the constitution and no principle of logic which compels the conclusion that a speeding violation is or is not criminal. The legislature could make it a crime but has chosen not to do so.

Speeding violations result in forfeitures. Sec. 346.60, Stats. The legislature has decreed that conduct punishable only by a forfeiture is not a crime. Sec. 939.12, Stats. It is immaterial that a person may be imprisoned if he fails to pay a forfeiture. Imprisonment is solely a means of enforcing payment of the fine and and is not punishment for the offense. State ex rel. Keefe v. Schmiege, 251 Wis. 79, 85, 28 N.W.2d 345 (1947).

2. Defendant contends he was denied a constitutional right to counsel.

Defendant relies on the sixth amendment to the United States Constitution which provides, "In all criminal prosecutions, the accused shall ... have the Assistance of Counsel for his defense." Article I, sec. 7 of the Wisconsin Constitution provides, "In all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel; ..."

As a speeding violation is not a crime, neither constitutional provision is applicable.

While the transcript is not clear on the point, it appears that defendant was accompanied at the trial by a person who was not an attorney. He argues that his right to "counsel" does not mean that "counsel" must be an attorney. The same contention was made in State v. Kasuboski, 87 Wis.2d 407, 419-21, 275 N.W.2d 101 (Ct.App. 1978), where the court held that the word "counsel" under the federal and state constitutions refers to persons authorized by law to appear for or on behalf of another in a court of record, namely, licensed attorneys.

3. Defendant contends that the state violated his constitutional right to a trial by jury by trying the matter to the court.

Defendant relies upon the seventh amendment to the United States Constitution which provides that in suits at common law the right to trial by jury shall be preserved. The seventh amendment does not apply to trials in the state courts. Edwards v. Elliott, 88 U.S. (21 Wall.) 532 (1874).

Defendant also relies upon art. I, sec. 5 of the Wisconsin Constitution which provides, "The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy; but a jury

trial may be waived by the parties in all cases in the manner prescribed by law."

Section 345.43(1)(a), Stats., provides that a traffic case shall be put on the jury calendar if "either party files a written demand for a jury trial within 10 days after the defendant enters a plea of not guilty under s. 345.34 and immediately pays the fees specified ..." by the statute for a jury.

Assuming that defendant's demand for a "federal common law jury" embraces a jury trial in a state court, defendant did not pay the jury fees and therefore waived his right to a trial by jury.

4. Defendant contends that the 55 mile per hour speed limit is unconstitutional because it is a national speed limit and because the federal government used "bribery and blackmail with the threat of reduction and/or withdrawal of funds to get the States to pass the 55 MPH speed limit." The granting, reduction or withdrawal of federal funds to promote state legislation is a time honored practice. However, there is no evidence in this record that this state adopted the 55 mile per hour speed limit because of such considerations. In any event, an improper motivation, if such exists, for the adoption of a law does not affect its

validity. Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 131 (1809).

It is state law, and not a federal law, which the circuit court enforced in this action. Defendant's fourth contention is wholly without merit.

5. Defendant contends on brief that the circuit court lacked jurisdiction because no lawful summons was issued. Defendant relies upon sec. 801.02, Stats., which provides, in substance, that a civil action is commenced by the filing of a summons and complaint provided the service of an authenticated copy of the summons and of the complaint is made upon the defendant within sixty days after filing.

Section 801.01(2), Stats., provides, however, that the provisions of ch. 801 apply in all civil actions and special proceedings "except where different procedure is prescribed by statute or rule." A different procedure has been prescribed.

A uniform traffic citation and complaint was issued to the defendant. Section 345.11(5), Stats., provides,

> Notwithstanding any other provision of the statutes, the use of the uniform traffic citation and complaint promulgated under sub. (4) by any peace officer in connection with the enforcement of any state traffic laws or any local traffic ordinances in strict conformity with the state traffic laws, shall be deemed adequate process to give the appropriate court jurisdiction over

the person upon the filing with such court of the uniform traffic complaint.

Section 345.40, Stats., provides, "A citation which complies with s. 345.11 ... may be used as the initial pleading ... unless the court directs that formal complaint be made."

The circuit court is an "appropriate court" referred to in sec. 345.11(5), Stats., because it has jurisdiction by virtue of sec. 345.30 over violation of traffic regulations.

Section 801.02, Stats., is inapplicable and it is immaterial whether compliance was had with its provisions.

Defendant attaches too much importance to the form of the citation. He treats it as a summons and asserts that a court should not allow "its own summons to be issued without either the seal or the signature of the county clerk." The citation is not a summons but a notice to appear. The word "summons" does not appear in the citation. Even if it were a summons, the form would be of no great moment. The purpose of a summons is to give notice to the defendant that an action has been commenced against him. Lees v. ILHR Department, 49 Wis.2d 491, 497, 182 N.W.2d 245 (1971); Hoesley v. La Crosse VFW Chapter, 46 Wis.2d 501, 503, 175 N.W.2d 214 (1970); Milwaukee County v. Schmidt, Garden & Erikson, 35 Wis.2d 33, 36, 150 N.W.2d 354 (1967), and cases

cited. The legislature and not the courts determine the form. No statute requires that either a seal or a court officer's signature be affixed to a summons, muchless to a notice to appear which is not a summons. No issue is raised as to the adequacy of the notice given by the citation.

6a. Defendant contends that a radar reading is constitutionally inadmissible evidence.

Defendant relies upon the fourth amendment to the United States Constitution which provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, ..." He argues that his car is part of his "effects" and that the constitution guarantees him the right against an unreasonable search and seizure of his car.

The plain and simple response to defendant's contention is that readings as to defendant's speed obtained through the use of radar in no way constitute either a search or seizure of his automobile.

Defendant relies upon Katz v. United States, 389 U.S. 347 (1967), for the proposition that electronic surveillance is within the purview of the fourth amendment. The court there held that an electronic listening device attached to the outside of a public telephone booth from which the defendant placed his calls violated his right to privacy

which is protected by the fourth amendment. The privacy of the defendant is not affected by radar readings of the speed of his automobile.

Defendant claims that the sixth amendment of the United States Constitution which gives the accused in a criminal prosecution the right to "be confronted with the witnesses against him" is violated through the use of radar. This argument fails, if for no other reason, because defendant was not charged with a crime.

6b. Defendant argues that the officer's testimony based upon his reading of his radar equipment was inadmissible.

Defendant relies upon a provision in the Federal Rules of Evidence which is comparable to sec. 906.02, Stats., of the Wisconsin Rules of Evidence. Section 906.02 provides that a witness may not testify to a matter unless he has personal knowledge of it. He argues that the officer relied upon his radar equipment and had no personal knowledge strictly by his senses of the speed of the defendant's car.

The officer had personal knowledge of the reading of defendant's speed as disclosed by the officer's radar equipment. His testimony was based on that knowledge. The use of reliable devices to make measurements is universally accepted. We cannot believe that defendant seriously contends otherwise. The Wisconsin Supreme Court laid the matter to

rest in State v. Hanson, 85 Wis.2d 233, 270 N.W.2d 212 (1978), which holds that a speeding conviction may be based upon the speed of a moving vehicle as determined by radar.

7. Defendant contends that enforcement of the 55 mile per hour speed limit "is done in an arbitrary, prejudicial and discriminatory manner and cannot provide equal justice under the law to all citizens." Defendant contends that the testimony of the arresting officer indicates "that he decides who he is going to stop and not stop for breaking the 55 MPH speed limit."

The officer testified that he does not normally stop a car traveling between 56 and 59 miles per hour, depending somewhat on traffic and weather conditions. He stops cars traveling over 60 miles per hour 20% to 25% of the time. It is physically impossible to stop every car traveling over any particular speed. The percentage of cars traveling in excess of 60 miles per hour stopped by him increases but still depends upon traffic conditions and weather. He can only guess that he stops about 65% to 70% of cars traveling 65 miles per hour. If he sees three or four cars traveling together at a speed in excess of 55 miles per hour, the factors involved in making a determination as to which vehicle he will stop include traffic and weather conditions. He has to decide whether he can do so safely.

The selective discretion of a traffic officer in making an arrest has some similarities with the discretion exercised by the district attorney in deciding whether to prosecute a criminal offense as to which State v. Johnson, 74 Wis.2d 169, 174, 246 N.W.2d 503 (1976), held,

> To avoid prosecution for a criminal defense upon equal protection grounds it must be shown that the failure to prosecute was selective, persistent, discriminatory and without justifiable prosecutorial discretion.

The purpose of statutory speed limits is to promote highway safety. The officer's testimony shows that practicality and safety considerations underlie his decision whether to arrest a speeder. An officer physically cannot arrest every speeder he sees. He should not endanger himself or others for minor infractions of a safety statute. As a general rule, it is for the officer to weigh the practicalities, risks and seriousness of a particular incident.

We conclude that defendant has not shown that the practice of the state trooper who arrested him, or of the state traffic patrol generally, in selectively arresting speeding motorists, is without justifiable discretion.

By the Court.--Judgment affirmed.

Inclusion in the official Wisconsin Reports is not recommended.

APPENDIX

[1] The judgment provides,

> Upon all the files, records and proceedings, it is adjudged that the defendant has been found guilty after trial to the court on the 19th day of February, 1979, of the offense of speeding ten (10) miles per hour over the posted limit in violation of Section 346.57(4)(h) of the Wisconsin Statutes, committed on September 30, 1978.

The reference to sec. 346.57(4)(h), Stats., which pertains to the 55 mile per hour speed limit in unposted areas, is clearly inadvertent and a harmless error to which appellant makes no objection on appeal. The intent of the judgment is to refer to sec. 346.57(5) and we treat it as such. See sec. 805.18(2), Stats.